

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EB23WB-62375  
EEOC NO. 17E-2011-00401

K.M.,	)	
	)	<u>Administrative Action</u>
Complainant,	)	
	)	<b>FINDING OF NO PROBABLE CAUSE</b>
v.	)	
	)	
Hackensack University Medical	)	
Center,	)	
	)	
Respondent.	)	

On July 20, 2011, K.M. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employer, Hackensack University Medical Center (Respondent), discriminated against her based on age and race and then retaliated against her for complaining about the conduct, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.<sup>1</sup> Respondent denied the allegations of discrimination and retaliation in their entirety. The DCR Director reviewed the ensuing investigation and now finds as follows.

Complainant, who is Caucasian, is a Ramsey resident who on November 25, 1978, began working as a unit coordinator for Respondent, a 775-bed teaching and research hospital in Hackensack. During the time period relevant for purposes of this finding, Complainant was working as a staffing coordinator in the Patient Care Department's Staffing Office. The Staffing Office is charged with ensuring that the hospital meets its minimum staffing requirements at all times, i.e., finding coverage for the hospital's 34 clinical units when nurses are on vacation or

---

<sup>1</sup> Complainant also alleged that Respondent violated Title VII of the Civil Rights Act of 1964 as amended, and Age Discrimination in Employment Act (ADEA). DCR investigated the alleged underlying conduct pursuant to a worksharing agreement it has with the United States Equal Employment Commission.

sick leave. Respondent provided the following background information, which Complainant did not dispute:

In early 2009, [Respondent] completely restructured its staffing model. Instead of maintaining a decentralized model, the Medical Center implemented a centralized staffing model under which the Patient Care Department assumed the responsibility for ensuring coverall for all thirty-four units in the hospital. Under the new model, the nurse managers no longer were responsible for finding replacements to work in their unit when their employees called out sick or were out on vacation. Instead, the Medical Center established a dedicated "float" pool in the Patient Care Department to provide coverage as needed throughout the hospital. Under the new model, the nurse managers in each unit are required to report staffing needs to the Patient Care Department. The Patient Care Department then assigns the necessary personnel to staff the vacancies from the available float pool . . . [T]he primary responsibility of Staffing Coordinators is to schedule float staff for assignment to the units throughout the Medical Center. The Staffing Coordinators also are responsible for completing administrative tasks associated with scheduling the float staff, including entering staffing changes into the system, distributing daily staffing reports to Nurse Managers, among other tasks.

[See Letter from David G. Islinger, Esq. to DCR, Sept. 14, 2011]

As part of the restructuring, Complainant received a new supervisor--Nurse Manager Gladys Oladele. Complainant alleges that "on several occasions beginning on December 30, 2009 and most recently on December 6, 2010," she complained that Oladele was treating her differently than her co-workers in the Staffing Office because she was the "oldest and only Caucasian in her department." See Verified Complaint, ¶ 4.6, Jul. 20, 2011.

On March 2, 2011, Complainant was discharged at the age of 57. She alleged that prior to her discharge, she had been performing her job at a level that should have met Respondent's legitimate expectations. She alleged that Respondent never expressed any dissatisfaction with her job performance until after she raised the issue of discrimination with the Human Resources department (HR). See, e.g., Verified Complaint, supra, at ¶ 6. She concluded that she was discriminated against based on race and age, and then subjected to fabricated criticism in retaliation for complaining about discrimination, which, in turn, led to her dismissal.

Respondent claimed that the discharge stemmed solely from performance issues. It alleged that Nurse Manager Oladele began expressing concerns about Complainant's

performance shortly after she began supervising Complainant in 2009 and, for example, required Complainant to attend re-orientation well prior to her complaints to HR. Respondent alleged that its decision to terminate Complainant's employment came only after working with her for an extended period of time in an effort to improve her performance.

## **1. Race & Age Discrimination**

The LAD prohibits employers from discriminating against an employee or applicant for employment in "compensation or in the terms, conditions, or privileges of employment" based on that person's race or age. N.J.S.A. 10:5-12(a). Here, Complainant alleges that similarly situated younger, non-Caucasian employees (i.e., A.F., J.A., R.P., L.A., A.M., and S.H.) were given longer lunch breaks, received "revisions and updates on staffing lists and reports," were not "held accountable for errors attributed to those documents, and were treated differently with respect to shift coverage." See Verified Complaint, supra, at ¶¶ 4.6 – 4.8 & 6.

The DCR investigator asked Complainant to elaborate on her allegation that younger, non-Caucasian staffing coordinators were given longer lunch breaks. Complainant replied that on October 12, 2009, A.F. took an extra fifteen minutes for lunch. Complainant stated that when she brought the matter to Oladele's attention, the latter replied, "She doesn't take a break, it's ok." Complainant stated that when she asked if she could add fifteen minutes to her lunch and not take a break, Oladele did not answer her. Complainant described a second incident in which A.F. accused her of lying when she told Oladele that A.F. had just returned from lunch and had not been at a doctor's appointment as A.F. had claimed. Complainant did not provide an approximate date for the incident. Complainant alleged that whenever A.F. accused Complainant of taking too long of a lunch break, Oladele would believe A.F. Complainant stated that although other staffing coordinators sometimes exceeded their allotted lunch breaks and would simply announce that they were leaving for lunch, she always strictly adhered to the time limit. She stated that when she raised the issue with Oladele, the latter simply replied, "Ok." Complainant stated that she never received a negative comment on a performance evaluation

or any sort of discipline related to lunch. However, she felt that Oladele should have been more vigilant in enforcing the time allotment against the other staffing coordinators. During the fact-finding conference, Complainant stated, "Those people are given exceptions to the rule." Even if Oladele's assertions are true, it would not mean that Complainant's lunches were shortened based on her age and race. She took the amount of time to which she was entitled. Moreover, the October 12, 2009 incident occurred outside the applicable 180-day statute of limitations, N.J.A.C. 13:4-2.5, and the other incidents (many for which she could not provide any approximate dates) do not, without more, rise to the level of LAD violations.

Complainant submitted a written document entitled, "Examples of Errors [A.F.] Made that Were Blamed on Complainant," which listed eleven incidents that allegedly occurred between October 22, 2008, and February 18, 2010 (i.e., beyond the applicable 180-day statute of limitations, N.J.A.C. 13:4-2.5), such as:

Gladys [Oladele] said, "[A.F.] said you took 20 minutes for break today." "You went to lunch at 2:20 and came back at 3:15." I told Gladys "I did not take 20 minutes for break – I took 15 minutes as always, if not less and I did not leave for lunch at 2:20 – I left at 2:30." I told Gladys "you were standing right next to me at my desk when I left the office at 2:30 and returned at 3:15." Gladys said nothing!

\* \* \*

[A.F.] accused me of throwing the previous days roadmaps on her desk. (10/23). I said to [A.F.], "I came in at 6:00 am on that day and you came in at 7:00 am. So, how can you say I threw them, you weren't even in at that time! I place them neatly on your desk as this is where I find them each morning and thought you would want them there when you came in." [A.F.] now asked, "Why then did you take some of them this morning?" I told [A.F.] "as per Gladys I was told to now split them up and alternate doing the ER roadmap." Gladys never said a word to [A.F.] during this whole exchange.

\* \* \*

[N.] F. was written on the wall schedule for Friday 2/19/10, but was crossed off on the schedule on the clipboard. [A.F.] wrote her in on daily assignment sheet and noted her being preassigned 3S as was on the clipboard scheduled (but was this crossed off) and should not have been written. I told [A.F.] this so she would be aware that 3S would have this employee today. I told [A.F.] she was crossed off on the clipboard schedule and [A.F.] told me "that was just done. It wasn't there this morning." [A.F.] was inferring I had just crossed this out. [A.F.] lied so that it would look like she didn't make a mistake! I told Gladys about all of this and Gladys said, "I know you don't like. I'll speak to her."

When asked to elaborate on her allegation that younger, non-Caucasian staffing coordinators received revisions and updated staffing lists and reports, Complainant stated that on January 29, 2009, Oladele gave her a guide book that showed the ratio of nurses to patients, and told Complainant to consult the book when making staffing decisions. Complainant alleged that when she prepared a report based on that information, Oladele criticized her for using incorrect data. She realized that some of the information in the book was outdated and that Oladele verbally informed other staffing coordinators about revisions and updates to the staffing lists. Complainant stated that those criticisms were not reflected in her written evaluations or result in any disciplinary action.

When asked to elaborate on her allegation that she was “treated differently with respect to shift coverage,” Complainant alleged that she was “required to cover [A.F.]’s absences on the 5 a.m. shift, while younger and non-Caucasian staffing coordinators were not required to cover [A.F.]’s shift.” She acknowledged during a subsequent fact-finding conference that she and A.F. were the only staffing coordinators who worked in the mornings. In particular, Complainant stated that A.F. worked from 5 a.m. to 1:30 p.m., Complainant worked 7 a.m. to 3:30 p.m., and the other staffing coordinators worked from 3 p.m. to 11 p.m. The investigation found nothing inherently unfair or unusual in asking the two day-shift employees to cover each other’s shifts. Here again, Complainant provided no dates for the alleged occurrences and nothing to support her claim that she was being singled out based on her race and age.

When asked if there were any other occasions of discriminatory treatment, Complainant replied that vacation requests were supposed to be submitted in writing and that priority was supposed to be given on the basis of length of employment at the hospital. She alleged that when she requested vacation time from May 26 to 29, 2009, she was denied. Presumably, she was alleging that the vacation time was given to a younger, non-Caucasian staffing coordinator with less seniority, but she did not identify the person. In any event, the DCR investigator did

not explore that issue because the May 26 to 29, 2009 period fell outside the applicable 180-day statute of limitations.

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. “Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” Ibid.

In assessing the foregoing allegations, DCR considered the fact that Complainant was not the only Caucasian under Oladele’s supervision. Indeed, Respondent provided the names and information (i.e., job descriptions, ethnicity, ages, overall performance evaluation for 2010, etc.) for approximately two hundred staff members whom Oladele supervised (e.g., patient safety attendants, nursing assistants, unit clerks, staffing coordinators), of which approximately half were listed as Caucasians. The personnel information contained therein did not suggest a pattern or practice of singling out older Caucasian employees for adverse treatment. Rather, the document showed that during the relevant time frame, Oladele issued a performance improvement plan (PIP) to only one employee out of the hundreds identified: Complainant. Respondent argued:

Ms. Oladele’s responsibility is not limited to simply staffing coordinators . . . The demographics of this group, especially terminations, overwhelmingly contradict any inference of discrimination . . . [O]f the four employee terminations . . . three are African-American, the other is Complainant. This lopsided statistic is even more indicative of a non-discriminatory motive toward Caucasians when you consider that only about ¼ of the employees in the department are African-Americans. Ms. Oladele is the supervisor for all these employees, preparing their annual evaluations and being primarily responsible for any termination decisions.

(See Letter from Gregory T. Alvarez, Esq. to DCR, Aug. 8, 2013, p. 5.) Respondent argues that the fact that “vast majority of Caucasian employees and older employees have been evaluated favorably by Ms. Oladele” (Islinger, supra, at p. 2) undermines any suggestion that Oladele was simply targeting older Caucasian workers for increased scrutiny. Respondent also claims that

Complainant was mistaken in asserting that she was the only Caucasian staffing coordinator. It notes that during the relevant time, M.L. and V.G. were also employed as per diem and temporary staffing coordinators. Respondent states:

In fact, [V.G.] was originally a Patient Safety Attendant, but Ms. Oladele promoted [V.G.] twice, first to Unit Clerk and then to temporary Staffing Coordinator on March 14, 2010. In particular, Ms. Oladele chose [V.G.] over other candidates with more seniority, including one of whom was African-American.

(Alvarez, supra, at pp. 4-5.) Respondent argues, “Under these circumstances, how can Complainant reasonably claim that Ms. Oladele is biased toward Caucasians?” (Id. at p. 5.)

Even if one were to accept that the incidents described by Complainant occurred precisely as alleged, within the applicable statute of limitations, and that they could be fairly characterized as infringements upon the “terms, conditions, or privileges of employment,” there is still nothing to support her assertion that those incidents were motivated by a discriminatory animus. For example, Complainant could not identify any remarks by Oladele suggesting that Oladele harbored a bias against older Caucasians. She did not claim that other similarly situated employees asserted similar allegations of racism or ageism. She did not provide any direct or anecdotal evidence of Oladele exhibiting her alleged bigotry towards anyone else including older Caucasians employees. In view of the above, and in the absence of any corroborating evidence, there is no reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the incidents she described amounted to illegal activity. Thus, the Director finds that probable cause does not exist to credit the allegations of discrimination and retaliation.

## **2. Retaliation**

The LAD states that protection against retaliation is triggered once an employee “oppose[s] any practices or acts forbidden under this act,” or “file[s] a complaint, testifie[s], or assist[s] in any proceeding under this act,” or “aid[s] or encourage[s] any other person in the exercise or enjoyment of any right granted or protected by this act.” N.J.S.A. 10:5-12(d).

Here, Complainant alleges that because she complained about harassment on December 30, 2009, Oladele began to criticize her work and issued her a PIP on that date.

Complainant alleged in her verified complaint as follows:

[O]n several occasions beginning on December 30, 2009 . . . [I] complained of discriminatory treatment to Respondent's human resources director, Kay Clarke-Turner, Esq., human resources representative Debbie Barbieri, nurse manager, Gladys Oladele, occupational health representative, Robin Bogard, and staffing office director, Jasmine Maurice. . . . Thereafter, Complainant's supervisor, Gladys Oladele, began to criticize [my] performance . . . . There is a causal connection between [my] protected activity and the employer's adverse actions.

[See Verified Complaint, supra, at ¶¶ 4.10 – 4.12]. Complainant recently reiterated those same assertions in an April 2, 2014, email to the DCR investigator. She has consistently maintained that no one ever voiced any concerns about her performance until she complained to the HR department about Oladele.

Complainant's theory of retaliation is premised on two critical assertions: (a) that Complainant engaged in protected activity on December 30, 2009, and (b) that Oladele's criticism began after that date. But as set forth below, the investigation could not corroborate either assertion.

**a. Did Complainant engage in protected activity on December 30, 2009?**

Complainant alleges that on December 30, 2009, she told Oladele and Department Director Jasmine Maurice that she planned to go to HR and complain that Oladele was publicly ridiculing her over supposed performance lapses. She alleges that they persuaded her not to go to HR. She claims that she said to Maurice, "I don't know what her problem is with me. I'd hate to think: could this be racial? I don't know what it could be – Gladys has me right on the top of her nose." The investigation found nothing to corroborate Complainant's claim that she made that statement to Maurice at the time.<sup>2</sup>

---

<sup>2</sup> Complainant points to a sign-in note dated January 4, 2010, which she submitted to Respondent's Center for Occupational Medicine. Where the form asks for the reason for the visit, Complainant wrote, "[I] feel ill due to harassment and intimidation by my supervisor (I just came from HR



In fact, when the DCR investigator asked Complainant to identify the occasions on which she complained to Respondent about “discriminatory actions,” Complainant replied by listing five dates. Each of those dates occurred after December 30, 2009. In particular, Complainant wrote:

I reported and filed several internal complaints of this harassment and discrimination with Human Resources (January 4, 2010, January 20, 2010, February 17, 2010, July 30, 2010, and December 6, 2010).

It appears that throughout the course of their short tenure working together, Complainant had no compunction about reporting Oladele’s objectionable conduct to Respondent. For instance, on February 15, 2010, Complainant submitted a two-page single-spaced rebuttal to her 2009 evaluation<sup>3</sup> in which she accused Oladele of making false and unfair assessments of her performance. She wrote, for instance:

I work well, as I always have with my co-workers . . . Only one co-worker on day shift has a hostile manner towards me. **(This is the employee that Gladys shows favoritism towards).** I have addressed this with Gladys, Jasmine, and this employee. I have expressed in all their presence my hope for a good working relationship. This employee is resistant to this and only she can change this. It is out of my control . . . I view all comments under opportunities for improvement to be untrue/unfair . . . I also find it interesting that Gladys could not find one strength to note on my evaluation for my past year of work. I believe this evaluation is retaliation by Gladys. This belief is supported by the fact that it was only **after** I notified Gladys and Jasmine on December 30, 2009 of my intent to go to HR (due to the ongoing intimidation and harassing behavior exhibited by Gladys towards me which Jasmine and Gladys were aware of before) that anything was ever mentioned to me about my job performance as being a issue or may ability to work with co-workers as a issues.

The document concludes, **“My question: After 30 years to HUMC with all favorable reviews, how is it that I went so wrong in one year under Gladys?”** (boldface in original).

---

– they’re aware also).” The note is evidence that she complained to Respondent on January 4, 2010 (i.e., not December 30, 2009), that she was being harassed and intimidated.

<sup>3</sup> The 2009 evaluation noted, among other things, that “[a]lthough [K.M.] met her general job competencies in 2009, she was inconsistent in determining proper staffing levels and demonstrating a strong understanding of staff while applying it to her job. [K.M.] should focus on prioritizing tasks, maintaining progress of all assignments to meet the needs of the department, and multi-tasking through better time management. [K.M.] needs to improve [her] ability to work together in cooperative efforts with co-workers.” See Complainant’s 2009 Evaluation, Feb. 11, 2010.

On April 14, 2010, she submitted a handwritten rebuttal to an April 14, 2010 disciplinary action notice<sup>4</sup> where she wrote in part:

The information & statements contained in this document are taken out of context & are not true . . . This action is a continued harassment & has been followed by retaliation by my Supervisor Gladys Oladele due to my going to HR on three occasions to complain about her continuous harassment of me. This has been documented in HR and occupational medicine. I believe her action to be personal and not business.

On August 9, 2010, she submitted a two-page single-spaced rebuttal to a disciplinary action notice charging that she was two months behind in processing the "Unit Needs List" and that she was regularly failing to respond to emails. Complainant did not deny falling behind or not responding to emails but still noted that the criticisms were unjustified. She wrote, "Since I have gone to Human Resources on three occasions Gladys has been retaliating against me and her behavior has escalated. I feel that Gladys is BIAS [sic] against me."<sup>5</sup>

---

<sup>4</sup> The disciplinary action notice alleged that Complainant inappropriately contacted a nurse manager after being told that the nurse manager complained about her to Oladele. In March 2010, the nurse manager sent an email to Oladele complaining that Complainant refused to help him resolve an RN staffing emergency in his unit. He wrote that he went to the Staffing Office "stressed and trying to find coverage," and Complainant told him that he would have to wait until A.F. returned from lunch. He said that when A.F. returned, she promptly resolved the issue. He noted that during the incident, A.F. asked Complainant a work-related question but that Complainant "didn't respond." (See Email from D.S. to Oladele, Mar. 25, 2010.)

<sup>5</sup> The disciplinary action notice alleged, among other things, that "[f]or the past two months the staffing office has received over 25 various [RN staffing] needs list request and you have not responded and or completed any." The notice states:

I have discussed in almost all our monthly meeting as well as one-on-one sessions with you that completing needs list is a major part of your job responsibility. You were asked to work on needs list on April 17, 2010 you were assigned for three weeks to respond and work on the units needs list. At the end of the three weeks the units needs list that were submitted during that period were not completed. As a result I coached and mentored you for a four week period. For the past two months the staffing office had received over 25 various needs list request and you have not responded and or completed any.

Furthermore I have reiterated on several occasions in our meetings the importance of responding to e-mails on a timely manner during your shifts. I have observed lately that three are days you do not respond to e-mails in your 8hrs shift. The following are days you did not respond to e-mails - 7/5, 7/8, 7/9, 7/12, 7/13, 7/15, 7/16, & 7/26. The following days 7/01, 7/02, 7/06, 7/07 and 7/14 you only responded to one or two e-mails.

Consequently your work performance is not meeting the job requirement. I will expect you to develop an action plan to improve on the stated issues immediately in order to

Gladys has told me in our one-to-one discussions and at other times that staffing the IMMEDIATE needs is the PRIORITY in the Staffing Office. While Needs Lists are important, these lists are for FUTURE needs not immediate needs which need to be addressed now. I have made this the priority and have attended to and covered daily needs first, as well as future needs as times allow for: sitters, clerks, NA's, and RN's. If I don't answer many e-mails it was do [sic] to me working on other priorities in the staffing office . . . Recently Gladys has been using the term "volume" to me instead of her past terminology of "pick up the pace," and "go faster." But as yet she has been unable to quantify in addition to staffing, how many phone calls, e-mails, needs lists, schedule, various reports etc. I'm support to be able to do in a day - and still has not. What Gladys said to me in the meeting regarding this subject was "a TIME STUDY is not necessary, that there are requirements and the functions." Gladys referring to herself one day in the office made this statement "**I have so much to do, I can't get everything done, I'm doing the best I can.**" I too, just like Gladys, can only do the best I can. When I expressed this to Gladys she has said "that's not good enough."

On November 16, 2010, Complainant submitted a three-page single-spaced memo to HR Director Kay Clarke-Turner and others stating that Oladele's continued criticism of her lack of production was "subversive" and "created a toxic work environment." For instance, she wrote:

I have informed Human Resources of incidents including my manager telling me that I am eating too slowly, shaking papers at me in a hostile threatening manner, and making aloud comments such as "pick up the pace," and "go faster," and "is that all you did" in front of my coworker which does not at all foster or support any type of improvement, support or collaboration.

Complainant argued that it was unfair for Oladele to criticize her for not completing tasks on time because her workload was too big, she lacked adequate support, and Oladele characterized multiple things as "top" priorities. She wrote that "the reality [is] that the tasks assigned for completion in one 8-hour day simply cannot be accomplished:"

[T]he tasks assigned to me cannot objectively be performed and are not accomplished by anyone else in the department within the stated timeframe because overtime is routinely both required and approved . . . [Oladele] has set every task as a top priority with properly evaluating the sequence of my duties or the fact that without adequate support it is impossible to complete certain assigned tasks in the time allotted . . . My manager often compares me to my coworkers but fails to acknowledge not only that our roles are very different – for

---

improver your impact on the operational needs of the staffing office. I will continue to be available for any questions or issues. Further, if no improvement noticed further disciplinary action will be taken up to and including termination from employment.

example one coworker that my manager compared to in terms of time management works the evening shift which is very different from the day shift and not as fast-paced.

On November 19, 2010, she sent an email to Clarke-Turner, copied to Maurice, and marked the email "High" importance. Complainant wrote:

I'm going on record for the 4<sup>th</sup> time of notifying Human Resources of Gladys' ongoing harassing, intimidating hostile and threatening behavior to me. This occurred yesterday when Gladys was not in the office but after she called me for the 4<sup>th</sup> or 5<sup>th</sup> time. Her hostile manner on the phone/yelling at me and then me "don't hang up" when I said "I have to go" as I tried to get off the phone with her to prevent her from continuing. But, she did continue. This was all in regard to me telling her I was not able to get the 11p-7a changes done before leaving, as the office got very busy just before and through the change of shift. Before hanging up Gladys threatened me to "remember the plan" referring to the Performance Improvement Plan she had just given me on Nov. 4 which stated that my position may be terminated if I did not improve. Gladys' harassing, intimidating, hostile and threatening behavior towards me has escalated since I first complained to Human Resources about her. Only after this has she written me up and given me Performance Improvement Plans. This is Retaliation. After notifying Human Resources of her behavior on three other occasions, I have to ask: why is this allowed to continue? I thought we had rules and policies [put in place to protect employees from this kind of behavior. **I want this harassment to stop !**

[See Email from Complainant to Clarke-Turner, "*Ongoing Harassing, Intimidating, Hostile and Threatening behavior by my Manager Gladys Oladele*," Nov. 19, 2010 (boldface and underline in original)].

Perhaps conspicuous by its absence, is any tangible evidence (e.g., emails, memos, diaries, notes, etc.) indicating that Complainant ever complained that Oladele was acting out of a race or age based discriminatory animus at any time on or before December 30, 2009. Although not conclusive evidence, it is not unreasonable to conclude that if Complainant genuinely believed that Oladele was discriminating against her based on race and/or age discrimination on or before December 30, 2009, i.e., the date of first PIP, there would be some record of her alerting Respondent to same, particularly in view of Complainant's pattern of diligent self-advocacy. But there is nothing to support her assertion that she raised the allegation of discrimination prior to her meeting with HR on January 4, 2010.

**b. When did Oladele's criticism of Complaint begin?**

But even assuming for the moment that she complained of age and/or race discrimination on December 30, 2009, the investigation did not corroborate her contention that Oladele's criticism of her job performance began *after* that date. Instead, the record contains a significant number of documents that appear to memorialize Oladele's concerns with Complainant's work well before (and after) the December 30, 2009 PIP. For example, five months earlier on August 3, 2009, Oladele wrote an email to Complainant that references on-going performance issues. Oladele's email stated:

I noticed after you left on Friday, there were some staffing decisions you made that I was concerned about. I have a copy of the schedules and I want Jasmine to go over it with you. If you remember correctly, there was an issue regarding the pull of an NA you made last Tuesday that Rosy was not pleased with and I had to intercede and resolve it immediately.

It leads me to believe that you are still struggling with doing staffing comfortably. At this point, Jasmine and I have decided on a new plan that may help you understand this concept of staffing better. Jasmine will soon be meeting with you to explain this plan further. Thanks.

The fact that Oladele required Complainant to attend re-orientation for two weeks in August 2009 indicates that Oladele was dissatisfied with Complainant's production/job knowledge long before December 30, 2009. Respondent produced documents entitled, "Staffing Office Schedule," which shows the work/vacation schedules for Complainant and the other staffing coordinators. Those records appear to show that Complaint attended 64 hours of orientation (the schedules are marked "O") in August 2009, i.e., from 7 a.m. to 3 p.m. on August 3, 4, 5, 6, 7, 12, 13, and 14.<sup>6</sup>

---

<sup>6</sup> This was not the only such remedial training program to which Oladele sent Complainant. Complainant wrote that Oladele also had her attend a time-management class because she felt that she was "not working fast enough." However, that occurred after December 30, 2009. In particular, Complainant wrote, "On April 28, 2010 Gladys had me attend a TIME MANAGEMENT CLASS which she felt would me multi-task better."

Respondent also produced an internal document dated October 9, 2009, entitled, "Team Member [K.M.]'s re-orientation evaluation," in which Oladele memorializes a discussion she had with Complainant about the latter's dissatisfaction with attending re-orientation. Oladele wrote:

I met with [K.M.] to evaluate how the re-orientation went for the first two weeks of August (8/3/09 to 8/14/09). [K.M.] stated "I did not gain much from the orientation or learn anything that I had not already known." She then said "I just felt humiliated to be put back to orientation." I responded back to her and said my intention was not to humiliate you but to help you improve on your staffing skills. When it was turning to personal attack I told her I am going to end the meeting at this time.

Complainant denied that the above discussion occurred. She denied ever telling Oladele on October 9, 2009, that the orientation was "humiliating" and unhelpful. In fact, she initially denied altogether attending any sort of re-orientation. She later stated that someone sat down with her for a short time over a few days to tell her things that she already knew. However, she rejected the characterization of those meetings as any form of orientation training. When presented with the Oladele's memo and the staffing office schedules, she claimed that they were fabricated but offered nothing to support those assertions.

Respondent produced a series of journal notes in which Oladele purports to memorialize Complainant's performance issues on thirteen days between August 2009 and December 30, 2009, such as, "11/30 [K.M.] was unable to complete her assignment on time . . . I coached her regarding what she can do to improve the assignment and be more efficient . . . 12/29 [K.M.] did not complete assignment. Ask if she can pass it on. I also told her to balance the schedule for the PSA. She could not get to it. RN needs care sent on a daily basis. [K.M.] does not attend to the needs. [sic]"

The PIP dated December 30, 2009, purports to memorialize four "problems" with Complainant's performance and gives examples and expectations. It states, for instance:

12/14/09

You did not [review unit] staffing [or "identify the holes and needs to be covered at the beginning of your shift"] until I brought it to your attention at 9:45 am and there were two critical holes on 4LS and one on 5PE that need immediate attention.

12/15/09

At 11:00 am, I asked if you have checked staffing you told me you were too busy with sitter report and you could not get to it yet. There was a critical hole on 5PW that was not identified.

The above examples were after I have held a staffing meeting with all the staffing coordinators and clearly reviewed the written expectations in order of priority.

Since our last meeting of 12/08/09, you have not followed through any of the [RN staffing] needs that were sent to the staffing office.

You have not [balanced the PSA schedule] since our last meeting on 12/08/09.

[See Complainant's PIP, Dec. 30, 2009]

Complainant contends that Oladele would not have created that PIP if Complainant had not mentioned that she was planning to go to HR.<sup>7</sup> However, Respondent produced a December 2, 2009 email from Maurice in which she provides Oladele with a template for the anticipated PIP. The record also contains a number of documents generated by Respondent before and after the PIP purporting to memorialize repeated performance/production failures despite regular feedback including weekly and/or bi-weekly meetings and various interventions.<sup>8</sup> Those documents culminate in a disciplinary action notice dated March 2, 2011, which states:

---

<sup>7</sup> Respondent contends that the reverse is true, i.e., that Complainant went to HR because she was angered by receiving the PIP. In other words, Respondent contends that the PIP was the impetus for the allegation of discrimination.

<sup>8</sup> For example, on November 4, 2010, Oladele issued a second PIP, which listed four problems and appeared to raise a number of the issues mentioned in the October 30, 2009 PIP. It stated, for instance:

RN Staffing needs list not completed in a timely manner. As a result, critical staffing needs are being left uncovered leaving the nursing units short of their minimum staffing requirements which ultimately impacts direct patient care.

Not responding to emails in a timely manner as it relates to the RN Staffing Needs List . . . This is an ongoing issue with the units that you are assigned to cover which are 4PW, 4NO, 3NO, and 3SO. These units are consistently left short of their minimum staffing coverage which impacts the operational needs of the office/unit. . . . On 09/17/10, the nurse manager sent an email requesting the status of the coverage for 09/22/10. I followed up with you on an email dated 09/17/10 and you never responded. You did not address the staffing needs of 09/22 until 9/21/10, the day before the requested was needed and therefore was unable to cover the need.

\* \* \*

[K.M.], due to work performance issues that were documented, you were given a 60 day [PIP] on November 4, 2010. We met on 12.6.2010 for a 30 day review of your PIP, but I did not see substantial improvement in your performance. We were scheduled to meet in January 2011, but since you were still unable to meet or sustain your job competencies and responsibilities in all areas as noted in our weekly meetings, I extended your PIP for an additional 30 days to continue to evaluate your performance. I have been giving you weekly feedback on your performance. To date, sufficient performance improvement has not been met and or sustained. Therefore, your employment at Hackensack University Medical Center is being terminated effective today.

After carefully reviewing the investigation report, the Director finds insufficient evidence to support the claim of retaliation. The fact that Oladele cited Complainant's performance issues prior to December 30, 2009, contradicts her allegation that Respondent never voiced any concerns about her work until after she complained about discrimination on December 30, 2009, and undermines her claim that the PIP was merely fabricated in response to her complaint. Complainant acknowledges that she was not meeting the performance goals set by Oladele, but alleges that those goals were unrealistic. The investigation found no evidence that other staffing coordinators demonstrated similar performance issues and avoided criticism.

Complainant challenged the legitimacy of the documents relied on by Respondent but provided nothing to support her insistence that those items were misleading or false. Simply denying the genuineness of documentary evidence without providing any basis for that challenge does not create a triable issue of fact. Cf. Pressler & Verniero, Current N.J. Court

---

[F]or the past two months you have not completed and or balanced the PSAs' schedules. As a result, unbalance schedules leads to PSA staffing coverage being done a daily basis versus monthly . . .

Time Management (Delays in completing Daily PeopleSoft/Ansos Reports which reflect changes/modification and additions impacting the nursing units staffing and scheduling

\* \* \*

Inconsistent with checking and responding to emails as it pertains to request or changes . . . [Failure in] prioritizing daily, weekly and monthly responsibilities as it pertains to . . . emailing Sitter Report to all [nurse managers] and Directors in a timely manner . . . [and] covering staffing needs for nurses.

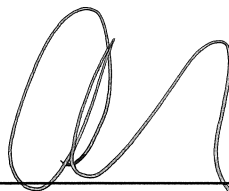
[See Complainant's PIP, Oct. 27, 2010]

Elsewhere, the PIP states that it takes Complainant on average "over 5 days to complete and enter the Daily PeopleSoft/Ansos Reports," which are supposed to be completed "within 48 hours email receipt."



Rules, comment 2.3.1 on R. 4:46-2 (2013) ("A plaintiff's self-serving assertion alone will not create a question of material fact sufficient to defeat a summary judgment motion."). Complainant repeatedly asserted that she received favorable evaluations for decades and suddenly became subjected to criticism. That fact would be significant if there had been no change of circumstances. Here, however, there was a significant change of circumstances. The department was restructured and Complainant obtained a new supervisor who apparently had a different managerial style, different expectations, different priorities, and different demands. It may be that Complainant was correct in her repeated protestations that Oladele's demands were unreasonable under the circumstances. But ultimately, the investigation makes no determination as to whether Oladele's negative assessment of Complainant's job performance was fair or unfair. It merely finds that the negative assessment was formulated many months before Complainant raised the discrimination allegations, and that the weight of the evidence does not support Complainant's accusations that Oladele's unfavorable opinion of her job performance stemmed from an age or race-based discriminatory animus.

WHEREFORE, it is on this 3<sup>rd</sup> day of JUNE, 2014 determined and found NO PROBABLE CAUSE exists to credit the allegations of discrimination and retaliation.



---

Craig Sashihara, Director  
NJ DIVISION ON CIVIL RIGHTS